

**IN THE EMPLOYMENT RELATIONS COURT**

**AT SUVA**

**APPELLATE JURISDICTION**

**CASE NUMBER:** ERCA 12 of 2015

**BETWEEN:** **ITAUKEI LAND TRUST BOARD**

**APPELLANT**

**AND:** **INIA QOLI TAVATUILAGI**

**RESPONDENT**

Appearances: Mr. P. Yaqona for the Appellant.

Mr. K. Maisamoa for the Respondent.

Date/Place of Judgment: Friday 11 August 2023 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

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**JUDGMENT**

**A. Catchwords:**

*Employment Law - Appeal - Appeal filed to seek clarification of an order of the Tribunal and in anticipation that the Tribunal may give a clarification against the appellant- the purpose of an appeal is not to clarify what the Tribunal means by its orders - that clarification should be sought from the Tribunal - an appeal in anticipation of an order is not provided for by the law and is premature - appeal frivolous on both grounds- employer should pay costs for filing a frivolous appeal.*

**B. Legislation:**

1. *Employment Relations Act 2007 ("ERA"): s. 230.*

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**Cause**

1. On 10 June 2015, upon hearing the worker Inia Qoli Tavatuilagi's claim for unlawful and unfair termination of employment, the tribunal found that the worker should be ***"reinstated to his former position with no loss of wages and benefits"***.

2. The employer appeals the decision on the ground that paragraph 53 of the judgment which states that “*the Tribunal orders that Inia Qoli Tavatuilagi be reinstated to former position with no loss in wages and other benefits*”, does not clarify whether the reinstatement with no loss of wages and other benefits is from the date of the order or from the date of the termination.
3. The employer says that the worker’s position is that he should be reinstated from the date of termination until the date of the order for reinstatement which means that he should be paid wages from the date of termination until the order for reinstatement.
4. It is the employer’s view that reinstatement is from the date of the order. The employer says that given the difference in the two parties reading of the order, there was a need to seek clarification from the tribunal on what paragraph 53 means, which the employer says it did and there was no response from the Tribunal.
5. The employer says that if the tribunal rules immediate full payment of wages and benefits from the time of termination then the tribunal has erred in law and in fact in exceeding its jurisdiction because the full payment of his wages from the time of termination to the date of the tribunal’s order would exceed the monetary jurisdiction of the tribunal which is \$40,000.
6. None of the other grounds of appeal were pursued by the employer.

#### ***Law and Analysis***

7. The employer is seeking to clarify from this court what the tribunal meant in its judgment by saying to reinstate the worker with no loss of wages and benefits: *whether the reinstatement is from the date of the termination or from the date of the order*. It has thus sought clarification from the tribunal. The tribunal has not dealt with that application and so the employer has appealed the decision to seek that clarification.

8. The appeal court is not the proper forum to seek clarification of what the tribunal meant in its orders. Any party who needs clarification of the judgment of the tribunal needs to go back to the tribunal to seek that clarification.
9. The Chief Tribunal who gave the judgment no longer holds office. Despite that, an appeal is not the proper procedure. An application pending in the tribunal for clarification needs to be dealt with by the tribunal. It could be another tribunal. There may be problems though in clarifying someone else's order. I may wish to remark that clarification is sought for orders that are ambiguous. Is the order in this case ambiguous requiring clarification? I will leave it at that.
10. I also wish to bring to the attention of the parties s. 230 (3) of the ERA which states when an order for reinstatement becomes effective. This may assist the parties in deciding when the order takes effect and also assist them in justifying their respective positions before the tribunal.
11. The employer's argument that if the tribunal rules that the reinstatement should be from the date of termination would effectively require the employer to pay wages and benefits from the date of termination. The order would then exceed the jurisdiction of the tribunal. I find that this is an appeal in anticipation of an order which is not permissible. The appeal is premature in law. The issue of exceeding its jurisdiction does not arise yet for determination.
12. The employer's appeal to clarify the judgment of the Tribunal is improper. The application is filed in the wrong forum. I also do not have jurisdiction to hear an appeal in anticipation of an order.
13. The employer's poor choice of where an application for clarification should be filed and whether an appeal in anticipation of an order is proper has incurred costs to the worker which should be compensated by the employer.
14. I am of the view that the employer should pay costs at the higher end.

**Final Orders**

15. The appeal has no basis and I dismiss the same. I order the employer to pay costs to the worker in the sum of \$5,000.00 within 21 days.



A handwritten signature in blue ink, appearing to read "Anjala Wati", is written above a horizontal dotted line.

**Hon. Madam Justice Anjala Wati**

**Judge**

**11.08.2023**

**To:**

1. **Legal Department, iTaukei Land Trust Board for the Appellant.**
2. **Maisamoa & Associates for the Respondent.**
3. **File: Suva ERCA 12 of 2015.**